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Paper No. 6

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OFFICE OF PETITIONS

In re Application of
Shawn Cornelius et al.
Application No. 09/710,155
Filed: November 9, 2000
Attorney Docket No.10022/26

ON PETITION

This is in response to the "Petition Under 37 CFR 1.47(a)," filed July 11, 2001.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks items (1) and (4) set forth above.

In regards to requirement (1), petitioner has not submitted sufficient evidence to show that diligent efforts have been made to reach the non-signing inventor, Matthew C. Klug. The showing of record, a single mailing to the last known address, is insufficient to prove that diligent efforts were made to reach the non-signing inventor. Petitioner should explain what attempts were made to reach the inventor through other means. If attempts to reach the inventor by other means (e.g. through e-mail, the telephone, telegram, etc.) continue to fail, then applicant will have

established that the inventor cannot be reached or contacted to execute the declaration. Details of the efforts made to reach or contact the non-signing inventor should be set forth in an affidavit or declaration of facts by a person having firsthand knowledge of the details.

The statements of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. If the inventor orally refuses to join in the application, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. If, on the other hand, petitioner receives an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the rule 47 petitioner that an omitted inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence must be submitted.

Whenever an omitted inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

As to item (4), a statement of the inventor's last known address is missing and is required.

In order to expedite consideration of the petition under 37 CFR 1.47(a), petitioner may wish to submit the renewed petition by facsimile transmission to the telephone number indicated below and to the attention of Irvin Dingle.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Special Program Law Office

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA 22202

Telephone inquiries related to this decision should be directed to Irvin Dingle at (703) 306-5684.

A handwritten signature in cursive script that reads "Frances Hicks".

Frances Hicks

Lead Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner
for Patent Examination Policy